

Montana Water Court
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FILED
04/11/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0116-R-2023
Stern, Anika
4.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: David W. Johnson

OBJECTOR: David W. Johnson

CASE 41U-0116-R-2023
41U 104271-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. David W. Johnson is the record owner of claim 41U 104271-00. Claim 41U 104271-00 was decreed with the following points of diversion:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENW	27	18N	3W	CASCADE
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
2		NESENW	27	18N	3W	CASCADE
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
3		NESWNE	27	18N	3W	CASCADE
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				

2. Claim 41U 104271-00 was decreed with the following DNRC issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. To address the issue remark, David W. Johnson filed an Objection on June 14, 2022. The Objection stated:

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.)

POINT OF DIVERSION INDICATED ON MAP ATTACHED TO THIS FORM

The map showed a single point of diversion in Section 27 -- the legal land description of the noted point of diversion was unclear; additionally, it was unclear if additional points of diversion were to be noted on the claim.

4. Claimant/Objector David W. Johnson was ordered to meet with a DNRC employee to address the issue remark. irrigated/place of use and volume issue remarks decreed on the claim.

5. On March 27, 2023, DNRC Water Resource Specialist Jason Larsen filed a Memorandum stating he discussed the issue remark with Mr. Johnson. According to Mr. Larsen:

Per my conversation with the claimant, there are three locations on that stretch of creek running through his property that he places his portable pump. There are no headgates being used. He didn't mean for "headgate" to be included in the means of diversion for the points of diversion.

Mr. Larsen attached aerial photos, an Amendment signed by Mr. Johnson, a photo marked by Mr. Johnson, and a review abstract to the Memorandum. Mr. Larsen recommends the following modifications be made to claim 41U 104271-00:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NESWNE	NESENW	27	18N	3W	CASCADE
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE						
2	SESWNE	NESENW	27	18N	3W	CASCADE
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE						
3	SESWNE	NESENW	27	18N	3W	CASCADE
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE						

6. Due to database restrictions, the means of diversion changes proposed by Mr. Larsen cannot be made to claim 41U 104271-00, so this Water Master suggests the means of diversion be modified to “other” and an information remark be added reflecting the changes proposed by Mr. Larsen.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

RECOMMENDATIONS

1. Claim 41U 104271-00 should be changed as shown in Finding of Fact No. 5 and discussed in Finding of Fact No. 6.

2. The issue remark should be removed from claim 41U 104271-00.

3. David W. Johnson’s Objection should be dismissed as it has been addressed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David W. Johnson
240 Comer Hill Rd
Great Falls, MT 59404-4903

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 104271-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID W JOHNSON
250 COMER HILL RD
GREAT FALLS, MT 59404 4903

Priority Date: JULY 31, 1955

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FURROW

Flow Rate: 1.25 CFS

Volume: 162.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 50.00

Source Name: UNNAMED TRIBUTARY OF SULLIVAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	27	18N	3W	CASCADE
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	OTHER					
2		SESWNE	27	18N	3W	CASCADE
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	OTHER					
3		SESWNE	27	18N	3W	CASCADE
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	OTHER					

MEANS OF DIVERSION IS PUMP W/DITCH OR PIPELINE.

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	45.00		S2NE	27	18N	3W	CASCADE
2	5.00		E2SENE	27	18N	3W	CASCADE

Total: 50.00